

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6460 OF 2024

Jayesh Dharamdas Jhaveri	...Petitioner
Versus	
Rajgruhi Cooperative Housing Society	
Ltd And Ors	...Respondents

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Mr. Kishor Patil, i/b Mr. Shinde Balaji, for the Petitioner.

Mr. R.S. Pawar, A.G.P. for the Respondent Nos. 2 to 4 - State.

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CORAM	:	AVINASH G. GHAROTE, J.
DATE	:	10th JULY, 2024

P.C.:

1. Heard learned counsel for the petitioner and learned AGP appears for respondent nos. 2 to 4. None appears for the respondent no. 1 though served.

2. The petition questions the Order dated 03.10.2023, passed by the Deputy Registrar, Co-Operative Societies, Nashik (page 87), rejecting the application of the petitioner to be enrolled as member of the respondent no. 1-Society and transfer of the shares of late Dharamdas Manilal Jhaveri in his favour, which is claimed on the basis of will dated 20.01.2017 executed

by late Dharamdas Manilal Jhaveri and so also the NOC given by the other legal heirs of late Dharamdas Manilal Jhaveri, the widow Nirmala Dharamdas Jhaveri, daughter Mrs. Tanvi M. Bhatavia and another daughter Mrs. Rashmi Umesh Sheth (page 55 to 57). The revision there against has also been dismissed by the Divisional Joint Registrar (Co-operative Societies) Nashik Division, by the Order dated 01.03.2022 (page 17).

3. The rejection appears to be on the ground that the will dated 20.01.2017 by late Dharamdas Manilal Jhaveri, was not probated and the NOC is given by the mother and two sisters are old.

4. In my considered opinion both these reasons for rejection are unsustainable in law, on account of the fact that the immovable property which is subject matter of the will dated 20.01.2017, is situated at Nashik on account of which the requirement of the probate would not be there see (*Clarence Pais & Ors. vs. Union of India AIR 2001 SC 1151*). The second reason, is also not sustainable, for the reason that the requirement is only of an NOC from the other legal heirs. Once this is there, whether it is old or new is not the business of the Assistant Registrar, for he

does not sit as an Adjudicating Authority for determining the entitlement, rather it is an administrative function which is been performed by him of directing entering of the name in the register of the members. That being the position the impugned order dated 03.10.2023, passed by the respondent no. 3 as well as the one dated 01.03.2024, cannot be sustained and are hereby quashed and set aside and the original application dated 03.11.2022, (page 25) is allowed.

5. The respondent no. 1 is directed to grant membership to the petitioner and issue Share Certificate.

6. The petition is disposed off in the aforesaid terms.

(AVINASH G. GHAROTE, J.)